

AMENDED IN SENATE MARCH 27, 2006

**SENATE BILL**

**No. 1629**

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**Introduced by Senator Speier**

*(Principal coauthor: Assembly Member Lieber)*

*(Coauthor: Assembly Member Karnette)*

February 24, 2006

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An act to add Chapter 7 (commencing with Section 12500) to Part 2 of Division 2 of the Public Contract Code, relating to state contracts, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1629, as amended, Speier. Public contracts: ~~The~~ *the* Federal Laboratory-Technology Contracting Act.

The State Contract Act governs contracting between state agencies and private contractors, and sets forth requirements for the procurement of materials, supplies, equipment, and services by state agencies. Existing law sets out the various responsibilities of the Department of General Services, and other state agencies in overseeing and implementing state contracting procedures and policies.

This bill would enact the Federal Laboratory-Technology Contracting Act to modify the existing contracting procedures and policies to ~~require~~ *authorize* a state agency that contracts with a federally funded research ~~laboratory and development center~~, as defined, *or a field center, as defined*, to make contract payments in advance, indemnify, to the extent permitted by state law, the ~~laboratory center~~, as provided, and reimburse the ~~laboratory center~~ for the actual costs incurred in performing the contracted services. This bill would *prohibit a state agency that contracts with a federally*

*funded Department of Energy or National Aeronautics and Space Administration (NASA) research and development center, or a NASA field center, from requiring either the center or the federal government to indemnify the agency and from imposing any standard state contracting terms or conditions that are inconsistent with the policies of the federal agency or agencies funding the contract. This bill would also require the Governor to designate the Secretary of State and Consumer Services as the state representative for purposes of communicating and negotiating with the representatives of the United States Department of Energy, ~~National Aeronautics and Space Administration (NASA), and NASA,~~ federally funded ~~laboratories Department of Energy and NASA research and development centers and NASA field centers,~~ as provided.*

This bill would set forth legislative findings and declarations regarding existing policies and procedures governing state contracts with federally funded *Department of Energy and NASA research laboratories and development centers and NASA field centers* located in California.

The bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.  
 State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Chapter 7 (commencing with Section 12500) is  
 2 added to Part 2 of Division 2 of the Public Contract Code, to  
 3 read:

4  
 5 CHAPTER 7. THE FEDERAL LABORATORY CONTRACTING ACT

6  
 7 12500. This chapter ~~is known and shall~~ *shall be known and*  
 8 *may be cited as the Federal Laboratory ~~Technology~~ Contracting*  
 9 *Act.*

10 12501. The Legislature finds and declares all of the  
 11 following:

12 (a) Technological advances are an important part of  
 13 California’s economy and, therefore, it would be wise for state  
 14 agencies to contract, in a facile and efficient manner, with  
 15 federally funded ~~research laboratories~~ *Department of Energy*

1 *(DOE) and National Aeronautics and Space Administration*  
2 *(NASA) research and development centers and NASA field*  
3 *centers located in California that are often at the forefront of*  
4 *science and technology.*

5 (e)

6 *(b) As the major funding agency and owner of several research*  
7 *laboratories located in California, the Department of Energy*  
8 *allows outside parties to contract with the laboratories but it*  
9 *requires the laboratories, when initiating and finalizing any*  
10 *contracts with outside parties, to adhere to rigorous policies and*  
11 *procedures developed by the department. The State of California*  
12 *has its own laws and procedures governing state contracts. The*  
13 *research laboratories owned by the Department of Energy have*  
14 *attempted to contract with state agencies and departments in*  
15 *California, but with minimum success research and development*  
16 *centers located in California, DOE allows outside parties to*  
17 *contract with the centers but requires the centers, when initiating*  
18 *and finalizing any contracts with outside parties, to adhere to*  
19 *rigorous policies and procedures specified by federal laws and*  
20 *regulations. NASA adheres to similar federal laws and*  
21 *regulations when initiating and finalizing contracts between its*  
22 *research and development centers or field centers in California*  
23 *and outside parties. The State of California has its own laws,*  
24 *regulations, and procedures governing state contracts. The*  
25 *research and development centers and field centers owned or*  
26 *owned and operated by DOE and NASA have attempted to*  
27 *contract with state agencies and departments in California but*  
28 *have had minimal success. Conflicting provisions and policies in*  
29 *federal and state laws, regulations, and policies, and seemingly*  
30 *unachievable compromises appear to be the major limiting*  
31 *factors in the successful negotiation of contracts between the*  
32 *federally funded laboratories centers and California state*  
33 *agencies and departments.*

34 (c) The State of California shall develop policies and  
35 procedures to ~~streamline~~ *encourage and enable* the contracting  
36 process with federally funded ~~laboratories~~ *DOE and NASA*  
37 *research and development centers and NASA field centers* and  
38 shall create a master contract that ~~could~~ *shall* be used by any  
39 state agency or department in negotiating a contract with one of  
40 those ~~laboratories centers~~.

1 12502. (a) Notwithstanding any other ~~provision of~~ law, a  
2 state agency that enters into a contract with a federally funded  
3 ~~research laboratory shall do all of the following:~~ *DOE or NASA*  
4 *research and development center or a NASA field center located*  
5 *in California may, if requested by the contracting party, do any*  
6 *of the following:*

7 ~~(1) If requested by the contracting party, make contract~~  
8 ~~payments to a laboratory for contracted services in advance.~~

9 *(1) Make contract payments to the center for contracted*  
10 *services in advance.*

11 ~~(2) To the extent permitted by state law, indemnify a~~  
12 ~~laboratory the center~~ with respect to ~~the~~ product liability,  
13 intellectual property, and general liability claims arising out the  
14 activities to be carried out by the ~~laboratory center~~ pursuant to  
15 the contract.

16 ~~(3) Reimburse a laboratory the center~~ for the actual costs  
17 incurred by the ~~laboratory center~~ in rendering its services under  
18 the contract with the state agency, *up to the contract ceiling*  
19 *amount.*

20 ~~(b) For purposes of this chapter, “federally funded research~~  
21 ~~laboratory” means a research laboratory that is affiliated with a~~  
22 ~~federal agency and is funded, at least in part, by the federal~~  
23 ~~government.~~

24 *(b) Notwithstanding any other law, a state agency that enters*  
25 *into a contract with a federally funded DOE or NASA research*  
26 *and development center or a NASA field center located in*  
27 *California shall not do either of the following:*

28 *(1) Require the center or the federal government to indemnify*  
29 *the state agency with respect to activities performed under the*  
30 *contract.*

31 *(2) Impose any standard state contracting terms or conditions*  
32 *that are inconsistent with the policies of the federal agency or*  
33 *agencies funding the center.*

34 *(c) For purposes of this chapter:*

35 *(1) “Federally funded research and development center”*  
36 *means a federally funded research and development center as*  
37 *defined in Subpart 2.1 of Part 2 of Subchapter A of Chapter 1 of*  
38 *Title 48 of the Code of Federal Regulations.*

1 (2) "NASA field center" means a field center identified as  
2 such by NASA and authorized by Title III of the Space Act of  
3 1958.

4 (d) A state agency shall not audit the records of any federally  
5 funded DOE or NASA research and development center, or a  
6 NASA field center, but it may rely on the services of a cognizant  
7 federal audit agency, including the Defense Contract Audit  
8 Agency, the United States Government Accounting Office or the  
9 United States Departmental Inspector General to satisfy its  
10 auditing requirements.

11 (e)  
12 (e) The Governor shall designate the Secretary of State and  
13 Consumer Services as the state representative for purposes of  
14 communicating and negotiating with the representatives of the  
15 United States Department of Energy, National Aeronautics and  
16 Space Administration ~~(NASA), and federally funded~~  
17 ~~laboratories, federally funded DOE and NASA research and~~  
18 ~~development centers in California, and NASA field centers in~~  
19 ~~California~~ regarding any issue that may affect a contractual  
20 relationship between the state and these federal entities.

21 SEC. 2. This act is an urgency statute necessary for the  
22 immediate preservation of the public peace, health, or safety  
23 within the meaning of Article IV of the Constitution and shall go  
24 into immediate effect. The facts constituting the necessity are:

25 In order for California state agencies and departments to be  
26 able to contract, in a facile and efficient manner, with federally  
27 ~~funded research laboratories~~ *Department of Energy and NASA*  
28 *research and development centers and NASA field centers*  
29 located in this state for purposes of developing new technologies  
30 that may protect public health and welfare, it is necessary that  
31 this act take effect immediately.